

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR,
ROCKY MOUNTAIN PIPELINE SYSTEM
SETTLEMENT AGREEMENT DOCKET NO. I08-04**

Infractions of the Utah Water Quality Act are penalized up to \$10,000/day/violation for civil penalties (\$25,000/day/violation for criminal) according to guidelines established in the penalty policy (*Utah Administrative Code R317-1-9*).

The principles that apply in the penalty policy are:

- 1) Penalties should be based on the nature and extent of the violation
- 2) Penalties should at a minimum, recover the economic benefit of noncompliance;
- 3) Penalties should be large enough to deter noncompliance;
- 4) Penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

To determine a civil penalty the State will consider:

- 1). the magnitude of the violations;
- 2) the degree of actual environmental harm or the potential for such harm created by the violations;
- 3) response and/or investigative costs incurred by the State or others;
- 4) any economic advantage the violator may have gained through noncompliance;
- 5) recidivism of the violator
- 6) good faith efforts of the violator
- 7) ability of the violator to pay;
- 8) the possible deterrent effect of a penalty to prevent future violations.

In the case of negotiated adjustments to penalties, arguments must be based on the considerations above.

Civil penalties for settlement purposes should be calculated based on the following formula:

CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

Penalties are grouped in four main categories:

- A. \$7,000 to \$10,000 per day. Violations with high impact on public health and the environment.
- B. \$2,000 to \$7,000 per day. Major violations of the Utah Water Quality Act, associated regulations, permits or orders.
- C. \$500 to \$2,000 per day. Significant violations of the Utah Water Quality Act, associated regulations, permits or orders.
- D. Up to \$500 per day. Minor violations of the Utah Water Quality Act, regulations, permits or orders.

Penalties are established within the penalty ranges shown above, based on the following criteria:

- History of compliance or non-compliance,
- Degree of willfulness or negligence, and
- Good faith efforts to comply.

Adjustments to the civil penalty include:

- The economic benefit gained as a result of non-compliance,
- Investigative costs incurred by the State and/or other governmental level,
- Documented monetary costs associated with environmental damage.

PENALTY - The penalty for FACILITY has been calculated as follows:

Gravity Component:

The gravity component of the penalty is based on violations (DESCRIBE VIOLATIONS AS LISTED IN NOTICE OF VIOLATION).

VIOLATION 1.

Rocky Mountain Pipeline System, LLC. (**RMPS**) is installing a 16 inch pipeline to deliver crude oil from the Evanston, Wyoming-area to the Salt Lake City- area refineries. The installation process is using both open trench and directional boring techniques. Over the weekend of October 19, 2007 through October 22, 2007 TWS Drillers was installing a 2,800-foot long horizontal bore along Highway 89 through Fruit Heights, Utah. The boring was crossing the area of Bair Creek during this time. During this time Sean Coreman of Kaysville Utah noticed Bair Creek was periodically turning from a clear state to a murky, sediment filled state. On October 21 he proceeded to hike up the creek to see if he could identify the source of what was discoloring the creek. He was able to locate a possible source when he came to the point the creek crosses under Highway 89. He reported the incident by email to various people inside Utah Department of Environmental Quality. He also informed the people at the work site. **TWS Drillers** reported the information forward and local **RMPS** representatives proceeded to investigate. The investigation turned up indications of sediment in the creek as a result of the pipeline boring operations. This violation is determined to be 3 days in length.

VIOLATION 2.

On November 17, 2007 **RMPS** reported an incident involving a release at a stream crossing for the project. The project was near Croydon, Utah in Morgan County. It was into Lost Creek in Trail Creek Canyon. Work crews for **RMPS** were constructing a trench across the Lost Creek. They were damming the creek, and pumping around the work site. There were sand bags up and downstream of the trench. They were pumping water out of the dammed section of the stream when the dam failed releasing sediment downstream. **RMPS** had a stream alteration permit. Normal flow was returned to the steam at 4pm. This violation is determined to be 1 day in length.

VIOLATION 3.

On January 20, 2008, Nate Norman of BioWest (onsite representative for **RMPS**) reported an incident involving a release at a stream crossing for the project. The project was near the Davis County Fairgrounds in Farmington, Utah in Davis County. It was into Farmington Creek. The release occurred on January 19, 2008. Work crews for **RMPS** were installing a horizontal boring in the area of the Fairgrounds where the pipeline crosses Farmington Creek. Drilling fluid was released from the drilling operation associated with the project. They noticed a plume extending down stream about 100 feet. They stopped drilling operations, installed hay bail booms in the creek, and added thickeners to the drilling fluid mix. The plume dissipated and drilling was resumed. This violation is determined to be 1 day in length.

VIOLATION 4.

On February 1, 2008 **RMPS** reported an incident involving a release at a stream from the project. The work was in the area south of Highway 193 along Highway 89 into an unnamed creek. Work crews for **RMPS** were installing a horizontal boring along Highway 89. Drilling fluid was released from the drilling operation associated with the project. They first noticed the release when the system indicated a difference in the amounts of fluid pumped and the amount returning. They started looking for possible release and located it. Approximately 700 gallons of fluid were lost to the bore hole. Only a portion of which reached the waterway. They started remediation of the release by sandbagging the waterway and pumped around the release, then worked to recover the released fluid. This violation is determined to be 1 day in length.

VIOLATION 5.

On February 6, 2008 Tom McCormick for **RMPS** reported an incident involving a release at a river crossing from the project. The work was in the area of Stoddard, Utah in Morgan County. The project was making a crossing of the Weber River. They were trenching across the river by damming above and below the trench and pumping around the site. During the operation they de-watered the trench and material removed by setting it aside and letting the water soak into the ground. They had been dewatering, but the ground was frozen, and the water didn't soak into the ground. The water ran off and got through their containment and flowed into the river. They stopped the leak and proceeded to reinforce their containment. Some water did get to the river and resulted in a sediment plume. This violation is determined to be 1 day in length.

There was no indication that there was any wildlife or fish that were harmed as a result of any of the violations. Due to the nature of the violations they all are categorized as Category C violations. Due the time to discover the first violation and start a response, and the amount of material released, Violation 1 is being elevated to a Category B violation.

Prior to the initial discovery of the release to Bair Creek there was little or no history of compliance or noncompliance in working with DWQ. The initial response to the incident by **RMPS** was to attempt to stop the release, and start to evaluate what impact had occurred, and how to prevent it from reoccurring as they continue working south along Highway 89 through Davis County. Their response to all other incidents during the work has been to be prepared for the problem to occur, and then to respond as fast as they can. Taking every effort to comply, and prevent a possible discharge when possible.

The penalties are being adjusted within their penalty ranges by the percentages below, based on the above information.

For Violation 1 the adjustments are

- | | |
|--|-----|
| • History of compliance or non-compliance, | %0 |
| • Degree of willfulness or negligence, and | %0 |
| • Good faith efforts to comply. | %75 |

For Violations 2 through 5 the adjustments are

- | | |
|--|-----|
| • History of compliance or non-compliance, | %50 |
| • Degree of willfulness or negligence, and | %50 |
| • Good faith efforts to comply. | %75 |

Violation 1 is being adjusted separately from violation 2 through 5 due to the difference in the response, history, and nature of the violation.

Economic Benefit Justification:

Economic benefit received for VIOLATOR is calculated based on;

1. capital investment delayed;
2. delayed expenditures, and;
3. expenses not incurred.

BEN is a program developed by the EPA to determine the economic benefit a violator has gained by not complying with regulations. For the purpose of calculating a BEN for this enforcement the concept of using another technique, such as open trench, as being an option that **RMPS** should have used is not being considered. Due to the constraints of the right of ways and existing infrastructure, it is accepted that direct boring was the best choice for installation of the pipeline.

The situation surrounding the violations did not require any major capital investments to remedy. They have only modified existing operating conditions as a result of the initial violation. They did not require any additional personnel to monitor sites further along the right of way. They also stepped up reporting of any incident or activity that could be remotely connected. The normal practice when a “frac out” was discovered, regardless of where it flowed, was to back off the drill, thicken up the fluid, and let it set up. They then clean up and recover as much drilling fluid as they can. Several of these had been detected along the route that surfaced next to homes, and had been dealt with in this manner.

When basing the BEN calculation on these items;

Capital Investment: This part of the calculation includes pollution items that were not bought to avoid the discharge such as silt fencing, gravel socks, etc.

Expenditures: This part of the calculation includes costs of items such as inspections, monitoring, and record keeping set up that were delayed.

O & M Costs: Avoided operation and maintenance costs were used in the economic benefit calculation.

It was determined that there was no economic benefit received from lack of actions that lead up to the violations. No economic benefit portion will be included in the penalty.